

Federal Acquisition Regulation

45.105

(c) The contractor's inability or unwillingness to supply its own resources is not sufficient reason for the furnishing or acquisition of property.

(d) *Exception.* Property provided under contracts for repair, maintenance, overhaul, or modification is not subject to the requirements of paragraph (b) of this section.

(e) Government property, other than foundations and similar improvements necessary for installing special tooling, special test equipment, or equipment, shall not be installed or constructed on contractor-owned real property in such fashion as to become nonseverable, unless the head of the contracting activity determines that such installation or construction is necessary and in the Government's interest.

[72 FR 27385, May 15, 2007, as amended at 75 FR 38680, July 2, 2010; 77 FR 12942, Mar. 2, 2012]

45.103 General.

(a) Agencies shall—

(1) Allow and encourage contractors to use voluntary consensus standards (see FAR 11.101(b)) and industry-leading practices and standards to manage Government property in their possession;

(2) Eliminate to the maximum practical extent any competitive advantage a prospective contractor may have by using Government property;

(3) Ensure maximum practical reutilization of contractor inventory for government purposes;

(4) Require contractors to use Government property already in their possession to the maximum extent practical in performing Government contracts;

(5) Charge appropriate rentals when the property is authorized for use on other than a rent-free basis; and

(6) Require contractors to justify retaining Government property not needed for contract performance and to declare property as excess when no longer needed for contract performance.

(b) Agencies will not generally require contractors to establish property management systems that are separate from a contractor's established procedures, practices, and systems used to

account for and manage contractor-owned property.

[72 FR 27385, May 15, 2007, as amended at 72 FR 63045, Nov. 7, 2007]

45.104 Responsibility and liability for Government property.

(a) Generally, contractors are not held liable for loss of Government property under the following types of contracts:

(1) Cost-reimbursement contracts.

(2) Time-and-material contracts.

(3) Labor-hour contracts.

(4) Fixed-price contracts awarded on the basis of submission of certified cost or pricing data.

(b) The contracting officer may revoke the Government's assumption of risk when the property administrator determines that the contractor's property management practices are non-compliant with contract requirements.

(c) A prime contractor that provides Government property to a subcontractor shall not be relieved of any responsibility to the Government that the prime contractor may have under the terms of the prime contract.

(d) With respect to loss of Government property, the contracting officer, in consultation with the property administrator, shall determine—

(1) The extent, if any, of contractor liability based upon the amount of damages corresponding to the associated property loss; and

(2) The appropriate form and method of Government recovery (may include repair, replacement, or other restitution).

(e) Any monies received as financial restitution shall be credited to the Treasury of the United States as miscellaneous receipts, unless otherwise authorized by statute (31 U.S.C. 3302(b)).

[72 FR 27385, May 15, 2007, as amended at 75 FR 38680, July 2, 2010; 75 FR 53150, Aug. 30, 2010; 77 FR 12942, Mar. 2, 2012]

45.105 Contractors' property management system compliance.

(a) The agency responsible for contract administration shall conduct an analysis of the contractor's property management policies, procedures, practices, and systems. This analysis shall